

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

GARY MILLER,

Plaintiff,

- against -

UPROXX MEDIA, INC.,

Defendant.

Docket No. 17-cv-02024

JURY TRIAL DEMANDED

**COMPLAINT**

Plaintiff Gary Miller (“Miller” or “Plaintiff”), by and through his undersigned counsel, as and for his Complaint against Defendant Uproxx Media, Inc. (“Uproxx” or “Defendant”) hereby alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of rapper Tupac Shakur being put into an ambulance owned and registered by Miller, a New York City based photojournalist. Accordingly, Miller seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

**JURISDICTION AND VENUE**

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or is doing business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

### **PARTIES**

5. Miller is a professional photojournalist in the business of licensing his photographs to online, print, and television stations for a fee, having a usual place of business at 137-02 224th Street, Laurelton, New York 11413. Miller's photographs have appeared in many publications around the United States.

6. Upon information and belief, Uproxx is a corporation duly organized and existing under the laws of the State of Delaware, with a place of business at 10381 Jefferson Blvd, Culver City, California 90232. Upon information and belief, Uproxx is registered with the New York Department of State, Division of Corporations to do business in the State of New York. At all times material hereto, Uproxx has owned and operated a website at the URL: [www.uproxx.com](http://www.uproxx.com) (the "Website").

### **STATEMENT OF FACTS**

#### **A. Background and Plaintiff's Ownership of the Photograph**

7. On November 30, 1994, Miller photographed rapper Tupac Shakur being put into an ambulance (the "Photograph"). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Miller is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

9. The Photograph was registered with Copyright Office and was given Copyright Registration Number VA1-233-155.

**B. Defendant's Infringing Activities**

10. Upon information and belief, on or about July 10, 2005, Uproxx ran an article on the Website entitled *I Might Not Change the World*. See <http://uproxx.com/smokingsection/i-might-not-change-the-world/>. The article prominently featured the Photograph. A true and correct copy of the article is attached hereto as Exhibit B.

11. Uproxx did not license the Photograph from Plaintiff for its article, nor did Uproxx have Plaintiff's permission or consent to publish the Photograph on its Website.

**CLAIM FOR RELIEF**  
**(COPYRIGHT INFRINGEMENT AGAINST UPROXX)**  
**(17 U.S.C. §§ 106, 501)**

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. Uproxx infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Uproxx is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the foregoing acts of infringement by Uproxx have been willful, intentional, and purposeful, in disregard of and with indifference to Plaintiff's rights.

16. As the result of Defendant's infringement of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to recover his damages and Defendant's profits pursuant to 17 U.S.C. § 504(b).

17. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).

18. Plaintiff further is entitled recover to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

19. Defendant's conduct, described above, is causing, and unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated or measured in money damages. Plaintiff has no adequate remedy at law.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Uproxx be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
5. That Plaintiff be awarded pre-judgment interest; and

6. Such other and further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: March 20, 2017  
Valley Stream, New York

LIEBOWITZ LAW FIRM, PLLC

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